IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7016 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHISHUPAL ALIAS ANTENA JAGDISHSING THAKUR

Versus

COMMISSIONER OF POLICE AHMEDABAD.

Appearance:

MR SATISH R PATEL for Petitioner

MR KT DAVE ASTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/02/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Banna Datta for learned advocate Mr.S.R.Patel, on behalf of the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 28th May, 1999 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicate that three criminal cases were registered against the petitioner at Nashabandhi Police Station (East) and Amraiwadi police stations on 1-7-98, 19-3-99 and 27-5-99 respectively for the offence made punishable under the Prohibition Act. That in each case, the country made liquor was seized from the possession of the petitioner / detenu. That except first case, the rest of the two cases are pending for investigation while, first case is pending for trial. Over and above, two witnesses on assurance of their anonymity have given statements on 27-5-1999 who have narrated alleged incidents dated 25-4-99 and 10-5-99 respectively regarding the bootlegging activities of the petitioner. That on the basis of the said material, the respondent No. 1 _ the Commissioner of Police, Ahmedabad city as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that on the date of passing of the impugned order, the petitioner was in judicial custody in respect to C.R. No : 479 / 99 registered at Nashabandhi Police Station (East) on 27-5-99 while, the petitioner was released on bail in all other case. That the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail granted to the petitioner in cases registered against him though available under Section 437(5) of the CrPC which shows non application of mind, vitiating the subjective satisfaction.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the

Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that in the grounds of detention, the detaining authority has observed that the petitioner is in judicial custody but is likely to apply for bail and having got himself released on bail, is likely to continue his anti social activities. The said observation itself suggests that the detaining authority has passed the impugned order on apprehension rather than on the facts produced before him. Furthermore, it suggests that remedy to claim cancellation of bail granted to the petitioner has not been considered which discloses non application of mind and as such, it is difficult to uphold the impugned order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 28-5-99 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner - SHISHUPAL ALIAS ANTENA JAGDISHSING THAKUR is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 1-2-2000 [A.K.Trivedi, J.]

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